

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Robert Bryan	Team: Squad #10	CCRB Case #: 202100292	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/13/2021 8:43 PM	Location of Incident: Front of 1759 Pitkin Avenue	Precinct: 73	18 Mo. SOL 7/13/2022	EO SOL 7/13/2022	
Date/Time CV Reported Wed, 01/13/2021 11:50 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 01/13/2021 11:50 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Favio Quizhpi	00000	948119	PSA 2
2. POF Dominique Armenio	18629	961626	PSA 2
3. POM Biko Harvey	07331	960639	PSA 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Henry Greco	06668	950529	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.LT Favio Quizhpi	Abuse: Lieutenant Favio Quizhpi stopped the vehicle in which § 87(2)(b) was an occupant.	
B.LT Favio Quizhpi	Abuse: Lieutenant Favio Quizhpi searched the vehicle in which § 87(2)(b) was an occupant.	
C.LT Favio Quizhpi	Abuse: Lieutenant Favio Quizhpi frisked § 87(2)(b)	
D.LT Favio Quizhpi	Abuse: Lieutenant Favio Quizhpi searched § 87(2)(b)	
E.POF Dominique Armenio	Force: Police Officer Dominique Armenio used physical force against § 87(2)(b)	
F.POM Biko Harvey	Force: Police Officer Biko Harvey used physical force against § 87(2)(b)	
G.LT Favio Quizhpi	Abuse: Lieutenant Favio Quizhpi failed to provide § 87(2)(b) with a business card.	

### Case Summary

On January 13, 2021, § 87(2)(b) filed this complaint via the CCRB website.

At approximately 8:43 a.m. on January 13, 2021, Lieutenant Favio Quizhpi of PSA 2 pulled § 87(2)(b)'s vehicle over on the corner of Watkins and Pitkin Avenue (**Allegation A – Abuse of Authority – Vehicle stop;** § 87(2)(g) Lieutenant Quizhpi was accompanied by Police Officer Biko Harvey, Police Officer Dominique Armenio, and Det. Henry Greco, all of PSA 2. Lieutenant Quizhpi accused § 87(2)(b) of having a marijuana odor in his vehicle and directed him to step out of his vehicle, which he did. Lieutenant Quizhpi searched his vehicle (**Allegation B – Abuse of Authority – Vehicle search;** § 87(2)(g) (**Allegation C – Abuse of Authority – Frisk;** § 87(2)(g) (**Allegation D – Abuse of Authority – Search of person;** § 87(2)(g) PO Armenio and PO Harvey escorted § 87(2)(b) to the back of the vehicle and allegedly pinned him against the trunk of his car (**Allegation E – Force – Physical force;** § 87(2)(g) and **Allegation F – Force – Physical force;** § 87(2)(g) PO Harvey then pushed § 87(2)(b) into his driver's seat after he refused instructions to sit in it (also **Allegation F – Force – Physical force;** § 87(2)(g) Lieutenant Quizhpi did not provide § 87(2)(b) with a Right to Know Act card as required (**Allegation G – Abuse of Authority – Refusal to provide RTKA card;** § 87(2)(g) § 87(2)(b) was not arrested or issued a summons as result of this incident.

Cell phone footage from this incident was attached to IA 28 (**Board Review 01**) and summarized in IA 85 (**Board Review 02**). BWC from this incident was attached to IA 35 (**Board Review 03**) and summarized in IAs 43-46 (**Board Review 04-07**).

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Lieutenant Favio Quizhpi stopped the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) stated that at approximately 8:43 p.m. on January 13, 2021, he was driving by himself in Brooklyn when he made a right turn onto Pitkin Avenue from Watkins Street and a dark unmarked police van pulled him over outside of 1759 Pitkin Avenue. Lieutenant Quizhpi approached § 87(2)(b)'s driver's side door and told § 87(2)(b) that he pulled him over for dark tints, because he was parked on the crosswalk, and because he had made a hard turn at a previous intersection. § 87(2)(b)'s back windshield and side windows were tinted at 40%. When the officers approached his car, his windows were all rolled down. At the red light at Watkins Street and Pitkin Avenue, there was a crosswalk and he thought that he eased up before the light turned green to get a good view of the traffic. Lieutenant Quizhpi did not specify where § 87(2)(b) made a hard turn and he did not believe he made a hard turn at any intersection. (**Board Review 08**).

Lieutenant Quizhpi stated he was driving in an unmarked vehicle with his partners, PO Harvey and PO Armenio, when he saw § 87(2)(b) taking a turn “pretty quick” in his car around the corner of Liberty Avenue and Mother Gaston Boulevard (formerly Stone Avenue) in Brooklyn. There were no specific crime conditions that Lieutenant Quizhpi knew about at the time. He did not recall what street he was coming from or what street he was turning onto. The speed of the car seemed fast, though the officers did not use a speedometer. § 87(2)(b)'s car also had tinted windows that were dark enough he could not see through, though he did not recall which windows were tinted. Lieutenant Quizhpi decided to pull § 87(2)(b) over, but before he was able to, § 87(2)(b) parked in the crosswalk at a red light (**Board Review 09**).

New York VTL Law Section 375 (12-a) states that no person shall operate any motor vehicle with windows which have a light transmittance of less than seventy percent. In other words, the windows cannot block more than 30% of the light (**Board Review 19**).

§ 87(2)(b), § 87(2)(g)

**Allegation (B) Abuse of Authority: Lieutenant Favio Quizhpi searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (C) Abuse of Authority: Lieutenant Favio Quizhpi frisked § 87(2)(b)**

**Allegation (D) Abuse of Authority: Lieutenant Favio Quizhpi searched § 87(2)(b)**

At 1:05 in Lieutenant Quizhpi's BWC footage, Lieutenant Quizhpi approaches § 87(2)(b)'s driver's seat window, which is rolled down, and tells him why he pulled him over. § 87(2)(b) provides his driver's license. At 1:30, § 87(2)(b) shows Lieutenant Quizhpi his vehicle's registration on his phone. At 4:17, § 87(2)(b) starts filming Lieutenant Quizhpi on his cell phone. At 4:33, § 87(2)(b) and Lieutenant Quizhpi begin to argue about why he was pulled over and whether his windows are tinted. At 6:00, as they continue to argue, Lieutenant Quizhpi says, "You weren't smoking weed in the car earlier or anything, right?" § 87(2)(b) replies, "I don't smoke." Lieutenant Quizhpi says, "No? Then why does it smell, then?" § 87(2)(b) says, "It doesn't smell. That's just a reason that y'all use to try to search someone's vehicle." At 6:10, Lieutenant Quizhpi tells § 87(2)(b) to step out of the vehicle due to the odor of marijuana. At 6:50, § 87(2)(b) steps out of his vehicle and § 87(2)(b) frisks his torso and legs and searches through the pockets of his jacket and pants. At 7:33, Lieutenant Quizhpi tells § 87(2)(b) to step to the back of his vehicle and searches inside of the vehicle. At 10:33, Lieutenant Quizhpi asks § 87(2)(b) for his keys, but he does not hand them over and asks the officers why this is necessary. At 11:19, Lieutenant Quizhpi reaches into § 87(2)(b)'s pockets for his keys, which fall to the ground and are picked up by PO Armenio and handed to Lieutenant Quizhpi. At 11:44, Lieutenant Quizhpi uses § 87(2)(b)'s keys to unlock and search his glove compartment, and at 12:25, he uses the keys to unlock and search the trunk. At 14:26, he closes the trunk and hands § 87(2)(b) his keys and license (**Board Review 03**).

§ 87(2)(b) stated he began recording the interaction on his cellphone for his safety, which seemed to make Lieutenant Quizhpi angry. Lieutenant Quizhpi said that § 87(2)(b)'s car smelled like marijuana, but § 87(2)(b) told him this was not true and that he did not smoke marijuana. Lieutenant Quizhpi asked § 87(2)(b) to step out of the vehicle, which he did. Lieutenant Quizhpi searched the front and back seats and the trunk § 87(2)(b)'s car but did not find anything (**Board Review 08**).

Lieutenant Quizhpi stated, in his first CCRB interview, that he decided to search § 87(2)(b)'s vehicle based on the smell of marijuana and that there were no other factors that led him to search the car (**Board Review 09**).

The smell of marijuana smoke alone is sufficient to provide officers with probable cause to search a vehicle and its occupants People v. Chestnut, 43 A.D.2d 260 (**Board Review 11**).

The detection of the strong odor of marijuana emanating from the defendant's person is sufficient grounds to search the defendant and his vehicle. People v. Turchio 244 A.D.2d 366 (**Board Review 12**).

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation (E) Force: Police Officer Dominique Armenio used physical force against § 87(2)(b).**

**Allegation (F) Force: Police Officer Biko Harvey used physical force against § 87(2)(b).**

At 11:28 in PO Harvey's BWC footage, PO Armenio holds onto the fabric of § 87(2)(b)'s jacket as Lieutenant Quizphi takes § 87(2)(b)'s keys from his right jacket pocket and continues to search the vehicle. An unseen object can be heard falling on the ground and PO Armenio puts it back in his pocket. At 11:30, PO Harvey grabs § 87(2)(b)'s left arm with both hands as PO Armenio puts her hands around his torso. The two officers lead § 87(2)(b) back to the trunk. At 12:00, PO Harvey releases § 87(2)(b) as PO Armenio holds onto his jacket. § 87(2)(b) walks to his left toward the sidewalk and PO Armenio briefly loses her grip on his jacket before grabbing it again a second later. She tells him to put his back up against the trunk while holding onto his arm. At 12:15, as § 87(2)(b) walks from the trunk to the driver's seat of his vehicle, PO Armenio tells § 87(2)(b) to "take a seat" in the driver's seat. She repeats this command at least seven more times as he says that the officers are violating his rights. At 12:22, PO Harvey also tells § 87(2)(b) to sit down, but he remains standing with his hands in the air. § 87(2)(b) complains about Lieutenant Quizphi searching his trunk, and at 12:45, PO Harvey again tells § 87(2)(b) to have a seat. At 12:55, PO Harvey tells § 87(2)(b) he is not following orders and grabs the sides of his torso with both hands, pushing him down into the seat and placing his feet inside the vehicle **(Board Review 03)**.

§ 87(2)(b)'s testimony was mostly consistent with the BWC footage, with some minor differences. He stated that while he was standing by the trunk of his vehicle with PO Harvey and PO Armenio, PO Harvey pushed him with one hand on his upper chest towards the trunk and "pinned" him to the trunk. § 87(2)(b) also did not mention being pushed into his driver's seat by PO Harvey **(Board Review 08)**.

PO Harvey and PO Armenio were not interviewed as their statements would not affect the recommended dispositions.

NYPD Patrol Guide Procedure 221-01 states that officers must consider the following criteria regarding the reasonable use of force: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number of subjects in comparison to the MOS; subject's violent history, if known; presence of hostile crowd or agitators; subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence **(Board Review 13)**.

§ 87(2)(b), § 87(2)(g)

**Allegation (G) Abuse of Authority: Lieutenant Favio Quizhpi failed to provide § 87(2)(b) with a business card.**

At 14:32 in Lieutenant Quizhpi's BWC, he hands § 87(2)(b) his license and keys. At 14:55, he walks back to his police vehicle as § 87(2)(b) continues to speak in the background. At no point in the footage does he offer § 87(2)(b) a business card (**Board Review 03**).

In a follow-up interview, Lieutenant Quizhpi stated he did not recall if he provided a Right to Know Act card, but believed officers only need to provide it when making an arrest. Because he did not arrest § 87(2)(b) he believed he was not required to provide a card. (**Board Review 10**).

NYPD Patrol Guide Procedure 203-09 states that officers must offer a business card to members of the public upon conclusion of certain law enforcement activities, such as vehicle searches, searches of a person, and frisks except in cases when a summons is issued or arrest is made (**Board Review 14**).

NYC Administrative Code 14-174 states that at the conclusion of a law enforcement activity, which includes vehicle searches, searches of persons, and frisks. Officers must offer a business card to the subject of the activity if it does not result in an arrest or summons (**Board Review 15**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 16**).
- Lieutenant Quizhpi has been a member of service for 13 years and was named as a subject in 46 allegations in 14 previous cases, four of which were substantiated.
  - Case 201910837 involved a substantiated allegation of discourtesy (word). The board recommended Command Discipline A and the NYPD imposed no discipline.
  - Case 202002918 involved a substantiated allegation of refusal to provide a Right to Know Act card. The board recommended Command Discipline A and the NYPD has yet to impose discipline.
  - Case 202004010 involved two substantiated allegations of a refusal to provide a Right to Know Act card. The board recommended Command Discipline B and the NYPD has yet to impose discipline.

This is the third case and fourth allegation in which Lieutenant Quizhpi has had a substantiated allegation of a refusal to provide a Right to Know Act card.

- PO Harvey has been a member of service for six years and was named as subject in seven allegations in three previous cases, none of which were substantiated. § 87(2)(g)
- PO Armenio has been a member of service for five years and this is the first CCRB complaint in which she has been named a subject.

#### **Mediation, Civil, and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of February 7, 2022, the NYC Office of the Comptroller had no record of a Notice of Claim being filed regarding to this incident (**Board Review 17**).

- § 87(2)(b)

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Squad 10 \_\_\_\_\_

Investigator:	<u>Robert Bryan</u>	<u>Inv. Bryan</u>	<u>5/5/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>5/5/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date